

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>THAYNE BARNETT</b>	)	
Claimant	)	
VS.	)	
	)	
	)	Docket Nos. 1,001,494 &
	)	1,001,496
<b>LAIRD NOLLER FORD, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRANSCONTINENTAL INSURANCE</b>	)	
<b>COMPANY/CNA and FREMONT COMPENSATION</b>	)	
<b>INSURANCE</b>	)	
Insurance Carriers	)	

**ORDER**

This is a dispute between respondent's insurance carriers. Transcontinental Insurance Company/CNA appealed the February 21, 2002 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

Claimant has initiated two proceedings against respondent before the Division of Workers Compensation. In Docket #1,001,496, claimant alleges an accidental injury involving his right knee on October 30, 2000, when Fremont Compensation Insurance (Fremont) was providing workers compensation insurance coverage for respondent. In Docket #1,001,494, claimant alleges a series of accidents through October 23, 2001, when Transcontinental Insurance Company/CNA (CNA) was providing workers compensation insurance coverage for respondent.

In the February 21, 2002 Order, Judge Benedict granted claimant's request for medical benefits and ordered the two insurance carriers to each pay one-half of those benefits.

CNA contends Judge Benedict erred. CNA contends claimant's accident occurred on October 30, 2000, before CNA insurance coverage commenced on January 1, 2001. Therefore, CNA argues it should be released from paying any part of claimant's medical expenses.

Conversely, Fremont and claimant disagree with CNA's analysis. They point out that claimant continued to work following the October 30, 2000 accident and experienced progressively worsening symptoms. Accordingly, they contend there is a question whether the work that claimant performed following the initial accident in October 2000 aggravated the right knee injury. They request the Board either affirm the February 21, 2002 Order or dismiss this appeal on the basis that the issue now presented is not subject to review from a preliminary hearing order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

This appeal should be dismissed as the Board does not have the jurisdiction to review the issue now presented by CNA in an appeal from a preliminary hearing order.

The compensability of claimant's right knee injury is not in issue. The parties have raised the question whether claimant's injury occurred during the period that Fremont provided respondent with workers compensation insurance coverage or during the period that CNA provided that insurance coverage, or during both periods. Accordingly, the issue now presented to the Board is what is claimant's date of accident for purposes of determining liability between respondent's insurance carriers, an issue which the Board does not have jurisdiction to review from a preliminary hearing order.

In appeals from preliminary hearing orders, the Board does not have jurisdiction to review every alleged error in fact or in law. In preliminary hearing matters, the Board's jurisdiction is specifically limited by K.S.A. 44-534a to the following issues, which are deemed jurisdictional:

- (1) Did the worker sustain an accidental injury?
- (2) Did the worker's accidental injury arise out of and in the course of employment?
- (3) Did the worker provide the employer with both timely notice of the accidental injury and timely written claim?

(4) Are there any defenses that will defeat the compensability of the claim?

K.S.A. 44-534a(a)(2) provides, in part:

. . . A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review. . . . Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

Additionally, the Board may review other preliminary hearing awards when a judge exceeds his or her jurisdiction. That authority is provided in K.S.A. 44-551(b)(2)(A), which provides, in part:

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. . . .<sup>1</sup>

But the administrative law judges have the jurisdiction at the preliminary hearing stage to decide medical compensation questions.<sup>2</sup> And the judge has the jurisdiction to decide those questions rightly or wrongly.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>3</sup>

As the date of accident for purposes of determining liability among an employer's various insurance carriers is not an issue that the Board has the authority to review from a preliminary hearing order, CNA's appeal should be dismissed.

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<sup>1</sup> K.S.A. 2001 Supp. 44-551.

<sup>2</sup> K.S.A. 44-534a(a)(2).

<sup>3</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

**WHEREFORE**, the Board dismisses the appeal, leaving the February 21, 2002 Order entered by Judge Benedict in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2002.

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BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant  
Frederick J. Greenbaum, Attorney for Respondent and CNA  
Christopher J. McCurdy, Attorney for Respondent and Fremont  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director